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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 SON KIM,

8 Plaintiff,

9 v.

10 MARTHA KERR and SGT. MILLER,

11 Defendants.

No. C11-5788 RJB/KLS

REPORT AND RECOMMENDATION
Noted For: November 18, 2011

This civil rights action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court is the motion of Plaintiff Son Kim seeking dismissal of this civil action. ECF No. 3. Plaintiff has not filed a complaint and his application to proceed *informa pauperis* (IFP) is pending. ECF No. 1. Accordingly, the undersigned recommends that this action be dismissed pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

DISCUSSION

On September 27, 2011, Plaintiff Son Kim filed a motion for leave to proceed IFP. ECF No. 1. On September 28, 2011, the Clerk sent a letter to Plaintiff advising that Plaintiff had failed to file a complaint, service copies and addresses for service of a complaint on the named defendants. ECF No. 2. Plaintiff was directed to correct the deficiencies in his filing by October 28, 2011. *Id.* On October 26, 2011, Plaintiff filed his motion for voluntary dismissal. ECF No. 3.

Rule 41(a)(1) of the Federal Rules of Civil Procedure provides, in pertinent part:

ORDER - 1

1 [T]he plaintiff may dismiss an action without a court order by filing (i) a notice of
2 dismissal before the opposing party serves either an answer or a motion for
3 summary judgment....

4 As noted above, a complaint has not yet been filed in this action. The undersigned
5 recommends that the Court dismiss this action without prejudice.

6 **CONCLUSION**

7 The Court should dismiss this action without prejudice.

8 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
9 Procedure, the parties shall have fourteen (14) days from service of this Report and
10 Recommendation to file written objections. See also Fed. R.Civ.P. 6. Failure to file objections
11 will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140
12 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the
13 matter for consideration on **November 18, 2011**, as noted in the caption.

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16 **DATED** this 3rd day of November, 2011.

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19 Karen L. Strombom
20 United States Magistrate Judge
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